IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5260 of 1995

For Approval and Signature:

HON'BLE MR. JUSTICE ANANT S DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMTIBEN SHIVABHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5260 of 1995

MR IS SUPEHIA for Petitioner No. 1

MR AR SHAIKH for Petitioner No. 1

MR HM PRACHHAK ld. AGP for Respondent No. 1

NOTICE SERVED for Respondent No. 2

NOTICE SERVED BY DS for Respondent No. 3

CORAM : HON'BLE MR. JUSTICE ANANT S DAVE

Date of decision: 02/12/2004

ORAL JUDGEMENT

1. That this petition under Article 226 of the Constitution of India, is filed by the widow of the deceased Shri Shivabhai Haribhai, who was serving with the respondent as Pasayata/Peon with respondent no. 3. That the said Shivabhai died on 2.5.1960 and claim forwarded by his widow Gomatiben was rejected by the authority vide order dated 8/11-3-1991 on the ground that the husband of the petitioner had not completed 5 years continuous pensionable services, which may have entitled him for pension and no evidence was produced.

2. Ld. advocate for the petitioner has stated that first wage drawn by the husband of the petitioner on 1.3.1943 and the last pay drawn by husband of the petitioner was on 12.3.1951. Thus, he has completed services for about 8 years, 1 month and 14 days. Therefore, according to the ld. advocate for the petitioner, wife of the late Shri Shivabhai Haribhai and was entitled for pension in view of the Government resolution dated 17.9.1981.

3. Ld. AGP Shri Prachhak has submitted that as per the Government resolution relied on by the petitioner legal heirs of the deceased employee are entitled only if deceased employee has completed pensionable job of 10 years. Not only that but the benefit of family pension and the policy in this regard came into vogue only after 1990-91 and the same is not applicable to the survivor of the deceased employee who have retired on or before 1960. Today, when the matter is called out ld. advocate for the petitioner has stated that the petitioner, wife of the deceased employee Shri Shivabhai Haribhai has also died and, therefore, he has filed Civil Application for bringing heirs on record. Ld. advocate for the petitioner is not aware about out come of the said civil application.

4. However, on merits of the case, it is clearly from the Government resolution, relied on by the ld. advocate for the petitioner that family pension cannot be given to survivor of the deceased employee of the Government even as per earlier resolution of dated 1.3.1979 and 25.3.1988 issued by the Finance Department which clearly state about the minimum years of pensionable services rendered by the employee. In view of the order passed by respondents on 8.3.1991 relying on the aforesaid resolution, it cannot be said that the said decision is in any way unreasonable or arbitrary and even minimum amount of family pension of Rs. 375/- p.m. is also not available to the survivor of deceased employee. No case is made out for claim agitated in the petition

and the decision of the authority in rejecting the said claim is just and legal. No further order is required to be passed. Rule stands discharged. No order as to costs.

(ANANT S. DAVE, J.)
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